IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 30 OF 2001

The State of Maharashtra & Ors. ...Petitioners

Versus

Ismail Sayyed Vazir ...
Respondent.

Mr. S.R. Nargolkar, Assistant Government Pleader,
for the Petitioners

Mr. M.I. Pathan for the Respondent.

CORAM: V.G. PALSHIKAR, Ag.C.J., &
SMT. NISHITA MHATRE, J.
DATE: JANUARY 9, 2006.

P.C.:-

1. By this petition, the petitioners have challenged the order passed by the Maharashtra Administrative Tribunal (for short 'Tribunal') holding, by majority, that the State failed to prove the allegation of misbehaviour and, therefore, ordered reinstatement of the respondent.
2. In this case, the basic charge against the delinquent, present respondent, was that he, while working as a liftman, molested one of the occupants of the hospital by requiring her to come to the lift for that purpose. The Enquiry Officer found, on appreciation of the

evidence, that the charges are proved and, therefore, ordered removal from service.

3. This was impugned by the delinquent, present respondent, by filing an original application before the Tribunal. The application came up for hearing before a Division Bench of the Tribunal, and there was difference of opinion between the two Members, one holding that the charge is proved, while the other Member holding that the charge is not proved. As a consequence, the matter was referred to a third Member of the Tribunal, who agreed that the charge was not duly proved.

4. The basic reason given by the majority for holding that the charges were not proved is the fact that the complainant was not even cited as a witness. It has come on record that the complainant had narrated the incident to another woman immediately, but even that other woman is not examined. In such circumstances, the benefit is given to the delinquent. It cannot be said that it is an error of jurisdiction. Hence, we see no reason to interfere. The petition is dismissed. Rule is discharged. The interim order is vacated.